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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,088	01/14/2002	Howard A. Fields	14114.0342U2	6001

7590

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EXAMINER

WORTMAN, DONNA C

ART UNIT

PAPER NUMBER

1648

DATE MAILED: 01/31/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/031,088

Applicant(s)

FIELDS ET AL.

Examiner

Donna C. Wortman, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-43 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Groups 1-10, claims 1-5 and 33-43, insofar as drawn to a single peptide having HAV VP4-VP2 epitopes and selected from SEQ ID NO's 1-10, and use of the peptide in immunoassays.

Groups 11-22, claims 1, 2, 6-8, and 33-43, insofar as drawn to a single peptide having HAV VP3 epitopes and selected from SEQ ID NO's 11-22, and use of the peptide in immunoassays.

Groups 23-38, claims 1, 2, 9-11, 33-37, 39, 40, 42 and 43, insofar as drawn to a single peptide having HAV VP1 epitopes and selected from SEQ ID NO's 23-38, and use of the peptide in immunoassays.

Groups 39-48, claims 1, 2, 12-14 and 33-43, insofar as drawn to a single peptide having HAV P2A epitopes and selected from SEQ ID NO's 39-48, and use of the peptide in immunoassays.

Group 49, claims 1, 2, 15-17, 33-37, 39, 40, 42, and 43, insofar as drawn to a single peptide having HAV P2B epitopes, SEQ ID NO:49, and use of the peptide in immunoassays.

Groups 50-61, claims 1, 2, 18-20, 33-37, 39, 40, 42 and 43, insofar as drawn to a single peptide having HAV P2C epitopes and selected from SEQ ID NO's 50-61, and use of the peptide in immunoassays.

Groups 62-65, claims 1, 2, 21-23, 33-37, 39, 40, 42 and 43, insofar as drawn to a single peptide having HAV P3A epitopes and selected from SEQ ID NO's 62-65, and use of the peptide in immunoassays.

Group 66, claims 1, 2, 24-26, 33-37, 39, 40, 42 and 43, insofar as drawn to a single peptide having HAV P3B epitopes, SEQ ID NO:66, and use of the peptide in immunoassays.

Groups 67-72, claims 1, 2, 27-29, and 33-43, insofar as drawn to a single peptide having HAV P3C epitopes and selected from SEQ ID NO's 67-72, and use of the peptide in immunoassays.

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Groups 73-88, claims 1, 2, and 30-43, insofar as drawn to a single peptide having HAV P3D epitopes and selected from SEQ ID NO's 73-88, and use of the peptide in immunoassays.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

The inventions listed as Groups 1-88 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

A national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ( "requirement of unity of invention "). Where a group of inventions is claimed in an application, the requirement of unity of invention is fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features " means those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. In this regard, WO 97/40147, listed on PTO 1449 filed November 18, 2002 as Paper No. 6, is cited as anticipating at least independent claim 1, since WO 97/40147 discloses several antigenic HAV peptides with one or more glutamine residues at the carboxyl end of the peptide: see, e.g., WO 97/40147, SEQ ID NO's 7, 8, 12, 16, 46, 48, 61, 65, 66, and 72.

Consequently, the claimed inventions 1-88 as listed above cannot be said to share a

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special technical feature, and the election of a single invention, i.e., a single peptide, is required.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donna C. Wortman, Ph.D. whose telephone number is 703-308-1032. The examiner can normally be reached on Monday-Thursday, 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 703-308-4027. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9307 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

A handwritten signature in black ink, appearing to read 'D. Wortman', with a stylized flourish at the end.

Donna C. Wortman, Ph.D.  
Primary Examiner  
Art Unit 1648

dcw  
January 30, 2003